about Second Grade teachers meeting to upcoming students and how to distribute them; as a result Tremble was given a larger share of low achieving students with behavior problems than the other teachers; Riley participated in this meeting. CD No. 98 at 33. Although Tremble was not the only teacher moved to a new grade level, white teacher Janice Wilson was moved from second grade to first grade; Riley handled the situation differently with Wilson; Riley first asked Wilson if she would mind being the one to switch from second to first; Riley also told Wilson that she wanted some cross grade level working the following year; Wilson was stressed because she was familiar with what she was doing. CD No. 106 at 31. Riley testified that the reason she changed Tremble's grade level was to implement vertical alignment of curriculum for school improvement. CD No. 108 at 138; Riley did not inform Tremble of anything about vertical alignment of curriculum when she met with Tremble about grade change. CD No. 98 at 34. There was no effort by Riley to coordinate any curriculum instruction vertically throughout the school or otherwise; the faculty received no literature from Riley indicating the new teaching strategy. CD No. 98 at 34; Riley did not inform parents of anything about vertical alignment, CD 98 at 35.

16. Riley attempted to designate Tremble as the EIP teacher, a program for low-achieving students. CD No. 98 at 36; School Board Policy requires consideration of the appropriateness of teachers' assignments because of the "significant impact on the morale of the professional staff and the effectiveness of the total educational program," CD No. 111 at Ex 85. It is commonly known in the teaching community that if a principal wants to get rid of a teacher all the principal has to do is make that teacher feel so unwanted and uncomfortable that the teacher would either leave or get fired, and this is what Tremble believes Riley and Natson were doing to her. CD No. 98 at 36. As a result of the

ongoing harassment continuing into school year 2000-2001, Tremble went to Natson to requested a transfer to another school, to get away from Riley; Natson found one possibility at Stilson, but Tremble could not accept it because of the distance from home, and the affect it would have on her family. CD No. [Plaintiff's Dep.]-47.

17. For the 2000-2001 school year, Tremble noticed on the committee list that Riley had her listed to serve on only one committee, the Arbor Day/playground/grounds committee; Tremble had a problem with this assignment because Riley had told the faculty at end of the 1999-2000 school years that she wanted every teacher on the curriculum areas committees that taught reading and math or science, social studies, and health. CD No. 98 at 37; Tremble took the matter to Riley and asked her if she could be utilized on another committee in addition to the Arbor Day committee, and Riley said emphatically, "No, that's all I want you to do is plant a tree"; after that, Riley never looked at Tremble again; Tremble walked out of her office, back to her room, and cried. As a black American, Tremble felt Riley was telling her that she belonged outside working in the fields picking cotton. CD No. 98 at 37.

18. About two weeks into the 2000-2001 year, Tremble went to Riley to discuss the lack of balance in her classroom; although Tremble had only two white female due to students that never showed up, she was more concerned about academic balance instead of racial balance at that time; Riley told Tremble that her class was just as balanced as the other second grade teachers; Tremble knew that was not true because she knew the students from the first grade; white teacher Diane Harrell had noticed the imbalance as well and stated to Tremble, "Your highs do not compare to their [the other 2nd grade teachers] highs"; Harrell is the extension teacher who teaches science, social studies and health to all

second graders and was in the position to see the differences between the classes. CD No. 98 at 38.

19. Unexplained incidences happened with Tremble's attendance records not being picked up like the white teachers; on August 20, 2000, Riley told Tremble that she was holding up the office from doing the attendance; Tremble returned to her classroom and saw her attendance record was still sitting the tray on her door and not, again, been picked up. CD No. 98 at 39.

20. On August 28, 2000, Riley wrote a note to Tremble stating Tremble needed to have reading levels in her students AR folders before sending them to the library; Tremble went to white librarian Joanne Newland to see what Tremble had done wrong that required Newland to go to Riley; Newland informed Tremble that Riley was standing there when one of her students happened to be checking out a book and saw no check was in the folder; Tremble went to for clarification, and Riley said to Tremble, "I have staff designated to tell me things"; at that point, Tremble told Riley about her conversation with Newland and Riley look shocked and displeased that Tremble knew she was not telling the truth; it was the word "designated" that bothered Tremble; it made her nervous; and she felt like she was walking on eggshells every day. CD No. 98 at 39, 40. Feeling insecure about how Riley was responding to her, Tremble went to see Simmons, who was, at that time, the president of the NAACP; they talked about Tremble's class profile, Riley, and other similar situations that he had encountered with the school system; Simmons told Tremble that he would go and talk with Riley if she would provide him with some documentation; she asked him what would he say to her, and he said that he would remind her that slavery was over and that she needed to back off of her. CD No. 98 at 40.

21. One of Tremble's white female students moved from area around September 5, 2000; a few days later one of her black female students transferred as well; Tremble now knew for sure her class was not balanced racially, academically or by gender. CD No. 98 at 40. A disciplinary problem occurred with the remaining white female student and her mother met with Riley on September 15, 2000; Tremble wanted to meet with the mother but she did not return to her classroom, as the mother said she would; Riley called Tremble into her office and said the parent had some concern about the student's accelerated readers log; Tremble attempted to explain and offer to do whatever she could to make the parent and Riley happy; she told Riley, "I was going to talk to the mother, but she didn't come back to the room. I'll erase any tests that she didn't do well on and start over again. I'll try to do a better job of checking her folder, reading range, and the computer to make sure that she can feel more successful at A.R"; Riley admonished Tremble by saying, "I want you to make sure E. [name redacted] is happy"; Tremble questioned what Riley meant by this; Tremble felt uncomfortable and said to Riley "What if I can't make her happy by your definition or her mother's definition of happiness no matter what I do? Dr. Riley, what if something else comes up?" (this was the third time this same student's mother had to be notified of a discipline problem); Tremble felt Riley was coercing her to break policy; Tremble could not understand where Riley was going with this conversation and she ended in tears. Tremble reminded Riley that she promised to do something about the imbalance in her classroom by September 8, 2000; thinking that this imbalance was against policy and that another school had undergone a similar situation that was dealt with by NAACP, Tremble said to Riley, "I will not lie for you. If a board member or anyone else recognizes that my class has one white female, I will not be able to cover for you." CD No. 98 at 41, 42, 43.

22. Mrs. Tremble went to Natson's office; he listened and agreed with Tremble that the student could not be the only white female in her class and that Dr. Riley should have known better because of incidents at the other school; Tremble told Natson that she was scared; he assured her that everything would be ok, to have a good weekend; as Tremble was leaving Natson's office, Riley was waiting to see Natson herself; that is as close as the three of them ever got to being in Natson's office at the same time, CD No. 98 at 43, 44.

23. Upon returning to school to gather her things, Harrell volunteered the following information: "The only student that we got together on to put in your class was J. Raymond [a black repeater in second grade]." This was the meeting that Tremble was not informed about. Harrell also stated, "we thought that he would benefit more by having a black teacher." CD No. 98 at 44.

24. On September 22, 2000, Tremble took half-day leave; upon her return, Jean Howard, a white substitute teacher, told Tremble that, "Dr. Dr. Riley came into your room and searched inside your desk. I think she left out with your report cards." Howard never mentioned that she had to help Riley in any way whatsoever and Riley had already seen them once before and Tremble knew that she had one very minor correction to make. Riley saw Tremble that same day and never mentioned that she had gotten them. Tremble became alarmed and nervous. This was totally out of character for Riley to go into a teacher's desk. Riley stated she needed to obtain information concerning a student's attendance report or academic achievement at the parent's request CD No. 71 at 4, but Sallie Zetterower keeps special attendance records and academic achievement records that are kept in the office on separate forms. CD No. 98 at 45.

25. Scared because Riley did not voluntarily tell her about searching her desk, Tremble called Natson on September 23, 2001 at his home; Tremble was thinking that Riley might be trying to set her up to get her fired, such as planting drugs or something in her desk; Natson assured Tremble that Riley was under "monitoring" and that Tremble had nothing to worry about. CD No. 98 at 45. Natson testified that he did follow up on this matter with Riley. CD No. 109 at 78; Riley did not remember Natson ever addressing that matter with her. CD No. 108 at 181. From this point on, Riley never spoke with Tremble privately, always including assistant principal Cobb. CD No. 98 at 46; a white teacher, Kathy Deloach, had meetings with Riley, but never one where both Riley and the assistant principal were present. CD No. 123 at 67.

26. Riley said that she couldn't figure out any other way to fix the imbalance in Tremble's class except to move the student to Bennett's class; Riley said they had been working on this all along, but couldn't find a way to fix the problem; the next day Riley moved the student to Bennett's class. CD No. 98 at 47. The white teachers had enough white female students that Riley could have moved one of them into Tremble's class, but chose not to do so. CD No. 133 at 177). Natson testified Riley had the option to move a white female from a white teacher's class to Tremble's class. CD No. 109-167.

27. Mrs. Tremble used her Early Pass to leave for a Doctor's appointment November 21, 2000. Before leaving, she could not find either principal to get her Early Pass pre-approved, so the school white secretary Diane Long told Tremble to go on to her doctor's appointment and that she would give the early pass to Riley. Upon returning to school, Tremble checked her mailbox and found a note from Riley stating that she had to turn in an additional early pass since

she didn't get the first one preapproved. Dr. Riley had not notified the faculty of any special procedures other than what she put on the "Early Pass". Subsequent to this incident, white teacher Anita Hill told Tremble that she had a similar situation, that Riley did not require her to turn in an additional pass but she went ahead and did it anyway. CD No. 98 at 47, 48. Hill testified if Riley was not available, teachers put the Early Pass in her box. CD No. 104 at 60.

28. In November 2000 during unrelated visit to school board office, Natson stopped Tremble when he saw her to see how things were going at work; she told him about the Early Pass incident and he said, "Good, your statement sent out a strong message." CD No. 98 at 48.

29. In November 2000 during a teacher leadership meeting, Tremble was told white teacher Kathy Deloach came down hard on Riley about her class profile. Deloach previously had approached Tremble and asked her about how her class imbalance issue was resolved. CD No. 98 at 49. Deloach could not recall this conversation; however, she was one of the witnesses coached by the defendants before and after witnesses were noticed to have deposition taken, as testified to by former white parapro, Gene Herrington. CD No. 102 at 7, 9. Before the Christmas break, Riley announced Deloach would be the new Quest teacher (gifted program) after the Christmas holidays.

30. Tremble's son wanted to take his new miniature puppy to class for share time; his white teacher, Deanne Page, had been asking Tremble to let him bring the puppy on share day and he did on February 2, 2001; Page was absent and white substitute teacher Dixon told Tremble he could still share his puppy. Tremble informed assistant principal Cobb about the puppy and Cobb, an avid animal lover, went to see the puppy; Dixon returned the puppy two hours later

to Tremble and told Tremble Cobb came over to pet the puppy and that Cobb was a good dog sitter. It was time for recess duty and before going to recess duty, Tremble told Harrell, her recess duty partner that she was taking the puppy over to Cobb's office and would meet her on the playground. Cobb willingly kept the puppy, and when recess was over, Tremble used her bathroom time to go back and pick the puppy up; Cobb had told Tremble she could leave the puppy until lunchtime, which was only 30 minutes away; Tremble also told Cobb she would take the puppy home on her lunch break if it were okay with her; Cobb gave her approval. CD No. 98 at 49, 50.

31. At some point during recess, a fight occurred; Harrell and Tremble wrote discipline report and gave it to Cobb, who was not pleased when she received the referrals; Cobb made a statement to Tremble that implied Riley would not be in a good mood once she sees all the referrals that she had in her hand; upon Riley's return to school on February 6, 2001 after her absence on February 2, 2001, and in keeping with her previous pattern, Riley over the school intercom summoned Tremble to her office shortly after Tremble got to work. CD No. 98 at 49, 50. Hill testified remarking to Tremble, "Well, what is it now? You just got here. You couldn't have done anything wrong already. What is it now?" CD No. 133 at 220. Upon arriving to Riley's office, Riley told Tremble to have a seat to wait for Cobb's arrival; after Cobb's arrival, Riley proceeded to reprimand Tremble; Cobb did not step up to the plate and defend Tremble in any way; Tremble found herself trying to justify the reason she was trying to be a good parent; Riley proceeded to link the puppy to the fighting incident that occurred on February 2nd; she told Tremble, "I heard you had a dog at school when the teacher wasn't here and that the fighting took place while you were tending to your dog." Tremble attempted to explain, but Riley said, "You are not to bring a dog to school without

asking me first." Tremble expected support from Cobb, but got none. The parent handbook did not state a parent has to check with the principal before bringing a caged pet to school. CD No. 98 at 49, 50, 51; Natson in his EEOC position statement clearly stated BCSD had no such policy. CD No. 111 at Ex 97. It was clear to Tremble that Riley was not concern about conducting an objective investigation, as Riley never asked Tremble any objective question about the events of February 2nd. Tremble felt like a child instead of a thirty-six year old woman; feeling sick and betrayed inside, Tremble simply said, "I'm sorry. My son just wanted to share his puppy for share day. I didn't know that Mrs. Page wasn't here." Upon returning to her class, Tremble started to cry in front of her students, her son, a second grade teacher, and a white parent volunteer, Michelle Cawthorn-Chandler; the students were upset seeing Tremble crying; Tremble felt sick and buzzed the office for a substitute; the white second grade teachers said to Tremble, "you're a parent and you haven't done anything that any other parent would do for their own child" and Cawthorn-Chandler said, "I bring animals all the time and I never check with the principals." Mrs. Margaret Klutz, a white third grade teacher, came through Mrs. Tremble's room when the incident happened on February 6, 2001, and expressed that she brought animals regularly and she never asked either principal. CD No. 98 at 54. Mrs. Klutz testified differently during her deposition. CD No. 105 at 28).

32. Mrs. Tremble left school feeling torn apart and confused. Mrs. Tremble went to the county office to talk to anyone in sight: " I'm crying and shaking" and again, "I ended up talking to Mr. Natson for the third time concerning Dr. Riley" CD No. 98 at 52. Natson spotted Tremble walking and crying, obviously very distraught; Natson approached her and Tremble told him what happened at school; Tremble told Natson that she had been treated

harshly; but, he still did not view what Tremble said as a complaint. CD No. 109 at 83, 84, 85; to "This time he [Mr. Natson] suggested that I write her a letter because he's trying to get her to understand how she makes people feel." CD No. 98 at 52; Natson believes he told Tremble to write the letter on another occasion. CD No. 109 at 87; but Natson concluded that whatever got Tremble upset it happened out of the meeting between her, Riley, Cobb CD No. 109 at 89.

33. Natson did not offer to seek medical help or a panel of physicians for Tremble CD No. 109 at 87, 88, 89, 90, 91; Tremble left the Board of Education to seek medical attention, as she began to have chest pains, CD No. 98 at 53. In between medical tests the same day, Tremble went back to school to pick up her son; Harrell came to Tremble and reassured Tremble of two things: that Tremble was out to recess duty when the fight took place and that Tremble was tending to the student that had thrown the rock when the other student came up to Harrell crying about some boys fighting him. Harrell told Tremble, "I'll go and tell Dr. Riley the facts if you think it will help" and she did. CD No. 98 at 53; CD No. 121 at 78.

34. Tremble returned to school and attempted to work February 7th-9th, but could not cope with what she perceived as a complete disregard of her as a person by Cobb and Riley, when neither of them would say anything to her, no apologies, no hello, just nothing. Tremble felt especially intimidated when on that same day, the 7th, both principals were walking down the breeze way walking in such a manner that Tremble had to step to the side to keep them from hitting her as they passed. Mrs. Tremble was feeling scared and sick. CD No. 98 at 53, 54.

35. White teacher Janice Wilson informed Tremble on Feb.7th that she brought two puppies to school that spent the

entire day in the production room that is directly across from the Riley's office, CD No. 98 at 54.

36. Gene Herrington, Tremble's white parapro, testified she was very critical of Tremble and complained to Riley about Tremble's absences during 1998/1999 school years, when Riley had Tremble doing Reading First Project Director duties. CD No., 102 at 45, 46; Tremble sensed Herrington was going behind her back complaining, because Riley would come to her classroom looking at her in a suspicious manner. CD No. 98 at 54.

37. Tremble's husband called Lynn Batten on February 12, 2001 to discuss his concerns about his wife's situation. CD No. 98 at 54. Batten denied knowing anything about Tremble's problems with Dr. Riley, CD No. 98 at 54, but Riley communicated with Batten on September 9, 2000 regarding Mrs. Tremble's classroom balance issue. Pet. App. at 71 (R6-111 [Att. B, Ex 46]); Riley had conference with Batten on April 9, 2001 regarding Tremble. Pet. App. at 72 (R6-111 [Att. B, Ex 47]; Riley had conference with Batten on April 23, 2001 regarding Tremble. Pet. App. at 73 (R6-111 [Att. B, Ex 48].

38. Tremble made a second visit to Donnie Simmons on February 12, 2001; sick and confused, Tremble went to Simmons' house with hopes that he could help her, CD No. 98 at 55; Simmons was not available and Tremble left a document for him; all Simmons could recall was his wife bringing Tremble to his attention saying, "You don't remember a lady coming by and saying something about a dog? And I said what was my reply? And she said I was in the middle of that OCR thing, and you said I really don't have time to fool with no damn dog." CD No. 100 at 60.

39. Tremble never observed Riley disrespect white teachers, CD No. 98 at 55; Tremble observed white teachers agree with Riley and complain about her, but Riley did not remove them from their leadership roles, CD No. 98 at 55. There were white teachers who had low ITBS test scores and they were not told to stay in their classroom. DC No. 98 at 55.

40. Batten received Tremble's Grievance on September 25, 2001; Batten responded October 2, 2001: "I am writing to notify you that your grievance was not filed in a timely manner or in accordance with proper procedures, therefore, will not be processed" Pet. App. 74 [(R1-33-[Ex C]. Tremble appealed to Batten in her October 8, 2001 letter; Pet. App. 75 [(R1-35-[Ex B]; Batten denied Tremble's appeal in his letter October 11, 2001. Pet. App. 87 [(R1-35-[Ex C]; Tremble replied October 13, 2001, indicating Batten neglected in his October 2nd letter to tell her what the procedures were, and Natson failed to inform her of grievance procedures on February 6, 2001. Pet. App. 88 [(R1-35-[Ex D].

41. Tremble's BCSD contract of employment states, "The terms and conditions of this contract are made expressly subject to provisions of the Constitution and the laws of the State of Georgia," Pet. App. 30 (R6-111 [Ex 51 Excerpt D 0176]).

ii. Basis for District Court's Jurisdiction

42. This is an action for employment discrimination, retaliation, deprivation of federally-protected rights, and related tortious conduct in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"); 42 U.S.C. § 1981 ("Section 1981"); 42 U.S.C. § 1983 ("Section 1983"); Title VI of the Civil Rights Act of

1964, as amended, 42 U.S,.C. §§ 20004 *et seq. ("Title VI");* Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 161 *et seq.* ("Title IX"), and the statutory and common law of the Sate of Georgia. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§1331 and 1367(a).

SUMMARY OF ARGUMENT

This case presents three distinct issues: (1) whether *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) constitutes substantive law that identifies which facts are material in a hostile work environment claim such that a district court is required to determine which alleged acts or conduct are part of the hostile environment claim for the purposes of determining a summary judgment motion; (2) whether *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972) constitutes substantive law that requires a district court in the first instance to determine whether a plaintiff's interest in a grievance hearing constitutes an interest encompassed by the Fourteenth Amendment's protection of property on a procedural due process claim for the purpose of determining a summary judgment motion; and (3) whether a federal circuit court of appeals can declare a frivolous appeal under FRCP 38 where the district court applied incorrect law in its determination of summary judgment and where district court denied FRCP Rule 11 sanctions on same issue.

ARGUMENT

In *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22, 27 (1988), this Court stated with clarity and with force the duty of the district court with respect to federal law:

> If Congress intended to reach the issue before the District Court, and if it enacted its intention into law in a manner that abides with the Constitution, that is the end of the matter; "[f]ederal courts are bound to apply rules enacted by Congress with respect to matters ... over which it has legislative power." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 406, 87 S.Ct. 1801, 1807, 18 L.Ed.2d 1270 (1967); cf. *Hanna v. Plumer, supra,* 380 U.S., at 471, 85 S.Ct., at 1144 ("When a situation is covered by one of the Federal Rules ... the court has been instructed to apply the Federal Rule, and can refuse to do so only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Enabling Act nor constitutional restrictions").

HOSTILE ENVIRONMENT CLAIM

In *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002), the Court clearly outlines standards to identify and distinguish a hostile work environment claim from a discrete act retaliatory or discriminatory claim. When a district court is faced with a summary judgment motion involving factual allegations of conduct spanning over a period of two years, it must necessarily engage in a detailed analysis to determine whether the alleged acts or conduct are discrete acts or hostile environment acts before it can apply the principles of Rule 56 of the Federal Rules of Civil Procedure. In the Tremble case, the district court's analysis was fatally flawed from the beginning. In its governing standard for the hostile work environment claim, the district court never cited Morgan as a source of substantive law or

legal authority for any proposition relating to the claim. Tremble's summary judgment response provided excerpts to 105 exhibits in support of her opposition to appellees-defendants' material statement of facts consisting deposition testimony, Bulloch County Board of Education policies, and other documentary evidence including witness interviews. Tremble's amended complaint and affidavit detailed acts and conduct happening consistently from school year 1998/1999 to 2000/2001. The district court made no attempt to define which alleged acts or conduct were discrete acts or which were hostile work environment acts. It made no attempt to determine the repeated nature or intensity of any of the alleged acts or conduct. It made no attempt to determine the cumulative effect of the alleged acts or conduct. It made no attempt to evaluate the alleged acts or conduct within the context of the teaching environment on the issue of what would be considered discriminatory intimidation, ridicule, and insult to a reasonable black teacher. In short, the district court made no attempt to do objective analysis. Without this analysis, it is impossible for the reviewing court to accurately assess summary judgment de novo when it cannot be determined what facts the district court relied on or what law was applied. In the district court's discussion of Tremble's claims, it simply made a conclusory ruling that, "Plaintiff's racially hostile environment claim likewise fails on the merits in that she fails to demonstrate the level of permeation required by the case law set forth above." Pet. App. at 25. Did the district court by implication determine the EEOC charge filing period, which acts or conduct occurred before July 13, 2001 (the date Tremble filed her EEOC charge, Pet. App. 102), which acts or conduct occurred within the file charging period, or which acts or conduct occurred after the file charging period? If it can be said that a district court can make these important determinations by implication, the district court would be placed above Congress and the U. S.

Supreme Court and answer only to itself. Indeed, this district court cited itself for its authority on the procedural due process issue. Pet. App. at 25, citing *Merritt v. Brantley*, 936 F.Supp. 988, 991 (S.D.Ga. 1996). Whether there is a genuine issue of material fact the district court must refer to the applicable substantive law that identifies which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Here, the district court's ruling is vague, evasive and incapable of providing a just determination of summary judgment on Tremble's hostile work environment claim within the contemplation of Title VII, Morgan, Rule 1 of the Federal Rules of Civil Procedure and *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

PROCEDURAL DUE PROCESS CLAIM

In the *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), this Court holds that "[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount." *Id.* at 569-570. Property rights are created and their dimensions are defined by existing rules or understandings that stem from state law. *Id.* at 577. Georgia law provides:

> (a) It is the intent of this part to resolve problems at the lowest possible organizational level with a minimum of conflict and formal proceedings so that good morale may be maintained, effective job performance may be enhanced, and the citizens of the community may be better served. These procedures require local units of administration to implement a simple,

> expeditious, and fair process for resolving problems at the lowest administrative level.
>
> (b) It shall be the duty of all local units of administration to adopt a complaints policy for certified personnel that shall contain the definitions and standards provided in this part.
> (Code 1981, § 20-2-989.5, enacted by Ga. L. 1992, p. 3303, 5 1.)

In the Tremble's case, the district court fails to state a governing standard altogether on the procedural due process issue, Pet. App. at 9-19, and in its discussion, the district court cited itself as the source of authority. It never discussed whether Tremble already acquired a property interest in the grievance procedure that requires Fourteenth Amendment's protection. *Id.* at 576. It never discussed the dimensions of the grievance procedure as intended by state law and whether the Board of Education's policy comport with due process in Section 1, the informal procedure, Pet. App. at 31, where no time frame is provided to give notice to employee of the beginning and ending of the informal process. The district court never discussed this law in context of due process issue. Tremble took her initial, and continuing, questions, concerns, or complaints about white principal Riley to Natson, the BCSD's designated official to address such Title VII issues, Pet. App. 90. The district court never discussed this fact or fact he reneged on his obligation to take immediate action to resolve the conflicts at their lowest possible level in the first instance; instead, he essentially set Tremble up as a target for Riley, who consistently found ways to undermine and humiliate Tremble in ways that a teacher would be sure to understand the principal is on a mission to get rid of the teacher. Batten obviously knew about Tremble's grievance long before

receiving it. Riley wrote in her notes "Batten and Natson both said I was overreacting and it looked like with time, the situation would be resolved without us ever having to do anything." Pet. App. at 72. Contrary to the district court's ruling, Pet. App. at 25, Batten thwarted both Tremble's administrative and State-court remedies on the pretext of an incorrect grievance form. Pet. App. at 74-89. On its face the district court failed in its duty under Rules 1 and 56.

FRAP 38 SANCTIONS

Rule 38 of the Federal Rules of Appellate Procedure provides, "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." In the Tremble case, the court of appeals panel fails to state any reasoning for their decision to grant sanctions, other than it agreed with the district court's judgment in all respects. Pet. App. 2-3. The district court itself specifically denied Rule 11 sanctions. In *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 407 (1990), this Court approved the standard that "[W]here an appeal challenges actions or findings of the district court to which an appellate court gives deference by judging under an abuse of discretion or clearly erroneous standard, the court is more likely to find that the appellant's arguments are frivolous". Tremble's appeal is clearly a de novo appeal and abuse of discretion standard is inapplicable. Here, the Eleventh Circuit itself violates Rules 1 and 56, denying Tremble a just determination of her claims at the appellate level and condoning the district court's application of incorrect law or application of no law at all.

CONCLUSION

I. Because the Eleventh Circuit Court of Appeals has

entered a decision that conflicts with *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002) on the governing standards for the district court to follow in consideration of summary judgment motion for a hostile work environment claim, a writ of certiorari with remand is appropriate to ensure a just determination of Tremble's claim and maintain consistency in the application of U.S. Supreme Court precedent within the Eleventh Circuit and among the circuits.

II. Because the Eleventh Circuit Court of Appeals has entered a decision that conflicts with *Board of Regents v. Roth,* 408 U.S. 564 (1972) on the governing standards for a district court to follow in consideration of summary judgment on Fourteenth Amendment due process claim, a writ of certiorari with remand is appropriate to ensure a just determination of Tremble's claim and maintain consistency in the application of U.S. Supreme Court precedent within the Eleventh Circuit and among the circuits.

III. Because the court of appeals failed to state reasoning for granting FRAP 38 sanctions when district court itself denied Rule 11 sanctions, a writ of certiorari with remand is appropriate to ensure a just determination of Tremble's claim and maintain consistency in the application of U.S. Supreme Court precedent within the Eleventh Circuit and among the circuits.

Tremble requests this Court to issue a writ of certiorari with remand on all claims with instructions for the Eleventh Circuit Court of Appeals to follow applicable U.S. Supreme precedent by way of having the U. S. District Court for the

Southern District of Georgia to apply U. S. Supreme Court precedents as set forth above.

Respectfully Submitted,

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Supreme Court, U.S.
FILED
(2)

05-104 MAY 05 2005

OFFICE OF THE CLERK

No. _____

In the _____

SUPREME COURT OF THE UNITED STATES

BRENDA E. TREMBLE,
Petitioner

v.

BULLOCH COUNTY SCHOOL DISTRICT
LYNN BATTEN
EUGENE NATSON, JR.
SHIRLEY COBB
BRENDA SHUMAN RILEY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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APPENDIX

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In the

Supreme Court of the United States

BRENDA E. TREMBLE,
Petitioner

v.

BULLOCH COUNTY SCHOOL DISTRICT
LYNN BATTEN
EUGENE NATSON, JR.
SHIRLEY COBB
BRENDA SHUMAN RILEY,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

APPENDIX

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I. OPINIONS OR ORDERS

No. 04-10705
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

D.C. Docket No. 01-00134CV-6

BRENDA E. TREMBLE,
Plaintiff-Appellant,

v.

BULLOCH COUNTY, Bulloch County School District, LYNN BATTEN, et al.,
Defendants-Appellees.

Appeal from the United States District Court For the Southern District of Georgia

(November 24, 2004)

Before ANDERSON, DUBINA and BLACK, Circuit Judges.

PER CURIAM:

After oral argument and careful consideration, we conclude that the judgment of the district court is due to be affirmed in all respects.

AFFIRMED.

FN 1 Appellees' Motion for Sanctions pursuant to Fed.R.App.P. 38 is GRANTED in part. We conclude that sanctions are due to be granted against appellant for having filed a frivolous appeal, but only with respect to the appeal of the procedural due process issue. Appellees are directed to assiduously separate out their time expended on this appeal which relates to the procedural due process issue. Appellees shall also designate the billing rate for the attorney or attorneys whose time is involved. Appellees shall include the foregoing in affidavit form and shall file same with the Clerk of this Court within 7 days after the date of this opinion. Appellant may file a response thereto within 7 thereafter. Single costs are also awarded against appellant.

[End of Opinion]

FILED U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEBRUARY 4, 2005

No. 04-10705-II
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
D.C. Docket No. 01-00134CV-6

BRENDA E. TREMBLE,
Plaintiff-Appellant,

v.

BULLOCH COUNTY, Bulloch County
School District, LYNN BATTEN, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
For the Southern District of Georgia

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC
Before: ANDERSON, DUBINA and BLACK, Circuit Judges.
PER CURIAM:
The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5, the Petition(s) for Rehearing En Banc are DENIED.
ENTERED FOR THE COURT:

S/S. Black

UNITED STATES CIRCUIT JUDGE
FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
JANUARY 7, 2004

DISTRICT COURT SUMMARY JUDGMENT OPINION (R7-127)
[** indicates District Court's page number]

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

BRENDA E. TREMBLE,
Plaintiff, 601 CV 134

v.

BULLOCH COUNTY SCHOOL DISTRICT, et al.,
Defendants.

In this employment-discrimination case a black elementary school teacher raises claims under Title VII (42 U.S.C. § 2000e, *et seq.),* 42 U.S.C. §§ 1981 & 1983, Title VI (42 U.S.C. § 2000d, *et seq.),* Title IX (20 U.S.C. § 1681, *et. seq.)* and Georgia law against the Bulloch County School District and various individuals (like the District's Superintendent, Lynn Batten, and other supervisorial staff). Plaintiff alleges, *inter alia,* that defendants unlawfully discriminated against her because of her race (e.g., she was assigned her to a "racially unbalanced" classroom, unfairly and discriminatorily reprimanded/criticized), created a racially

hostile environment, etc. Doc. # 10 ¶¶ 12- 36, 41-61; # 119 at 4-6, 10.

Tremble thus pursues compensatory and punitive damages, plus injunctive relief. Doc. # 119 at 8-9. Defendants move for summary judgment' (doc. # 71), to dismiss, doc. # 75, and for F.R.Civ.P. 11 sanctions. Doc. # 80. Tremble moves for additional time to respond to

> **FN 1** This Court applies the summary judgment principles explained in *Mize v. Jefferson City Bd of Educ.*, 93 F.3d 739, 742-43 (11th Cir. 1996); *Cohen v. United American Bank of Cent. Fla.*, 83 F.3d 1347, 1349 (11th Cir. 1996) and *Nizami v. Pfizer, Inc.*, 107 F.Supp.2d 791, 799 (E.D.Mich. 2000). Unrebutted, evidentially supported Fact Statements are deemed admitted under S.D.GA.LOc. R. 56.1 and *Dunlap v. Transamerica Occidental Life Ins. Co.*, 858 F.2d 629, *632* (11th Cir. 1988).

defendants' summary judgment motion, doc. # 95, and appeals from Magistrate Judge (MJ) rulings. Doc. ## 78-79. Defendants, meanwhile, move to strike her S.D.GA.Loc.R. 56.1 factual response statement. Doc. # 112.

II. BACKGROUND

In one of her briefs, plaintiff described her claims:

> This is a Title VII hostile or abusive work environment action based on race. Plaintiff ... was an elementary school teacher in the

Bulloch County School System ("BCSD") at Sallie Zetterower ["Sallie Z" elementary school] from 1994 until her disability retirement on [11/15/01]. Plaintiff began voicing her concerns to the Assistant Superintendent, Defendant [Eugene Natson, Jr.], about the principal, [Defendant Brenda Shuman-Riley], around May of 1999. Although ... Natson at that time told Plaintiff he would arrange mediation between [Tremble] and Riley, to take place in his presence, Natson changed his mind and simply referred Plaintiff's concerns back to Riley. The net result of Defendant Natson's actions was the continuation and acceleration of the conflict between Defendant Riley and Plaintiff. Plaintiff continue[d] to complain to Defendant Natson about what she perceived as retaliation from Defendant Riley for Plaintiff having gone to Natson about Riley around May of 1999. And Defendant Natson admitted during his deposition that on each occasion of Plaintiff coming to him, he referred the matter back to Defendant Riley. Defendant Natson further admitted that on none of the occasions of referring **2** Plaintiff's complaints back to Defendant Riley did he ever provide to Riley any guidelines on how to handle the conflict with Plaintiff, although Natson knew Riley was a new principal in BCSD. Plaintiff alleges a series of incidents that occurred from 1998 through 2001 in which Defendant Riley found ways to intentionally undermine Plaintiffs confidence as a teacher, to make Plaintiff appear incompetent

> to her coworkers, to make it obvious to her coworkers that Plaintiff was no longer in good stead with the Defendant Riley, and to generally, make possible an atmosphere where certain coworkers could find ways to knowingly, or unknowingly, assist Defendant Riley in her clear intent to humiliate, degrade, and "put Plaintiff in her place," that is, to visit upon Plaintiff the badges of slavery, an attitude projected to Plaintiff by the conduct of her white Principal, Defendant Riley, her white Assistant Principal, Defendant Shirley Cobb, her black Assistant Superintendent, Defendant Natson, and her white Superintendent, Defendant Batten, and reinforced by certain of her white coworkers. Plaintiff's lawsuit arises out of the intentional failure of the Defendants to take reasonable steps to resolve Plaintiff s initial concerns that mushroomed into complaints and, ultimately, this lawsuit.

Doc. # 60 at 2-3[2]; *see also* doc. # 119 at 4-6.

As will be demonstrated by the "Governing Standards" set forth *infra,* plaintiff must now

> **FN 2** Note that plaintiff violated S.D.GA.Loc.R. 7.1(b) *("Every* factual assertion in a motion, response, or *brief* shall be supported by a citation to the pertinent page in the existing record or in any affidavit, discovery material, or other evidence filed with the motion") (emphasis added).

adduce competent evidence showing that *racially discriminatory animus,* as opposed to simple personality

conflicts and/or professional disagreements, deficient management style (etc.), supports her discrimination claims. In that regard, plaintiff has clarified that she raises no Title VI, VII or IX claims against any of the individual defendants in their individual capacities. Doc. # 86 at 3-4; *see Shotz v. City of Plantation, Fla.,* 344 F.3d 1161, 1170 n. 12 (11th Cir. 2003) (no individual liability on Title VI and Title IX claims).

III. ANALYSIS

A. Governing Standards

1. Title VII Disparate Treatment

Because Tremble offers no direct evidence of discrimination, she by definition relies on circumstantial evidence (i.e., because there are footprints in the snow, it's reasonable to conclude that someone walked in it) to prove her Title VII claim, which is thus analyzed using the burden-shifting framework found in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973). She therefore bears the initial burden of establishing a prima facie case. *See Texas Dep't of Community Affairs v. Burdine,* 450 U.S. 248, 253 (1981). That means she must show that, because of her race, she suffered an "adverse employment action." *Taylor v. Small,* 350 F.3d 1286, 1292 (D.C.Cir. 2003).[3]

> **FN 3** Typically, to establish a Title VII prima facie case, the plaintiff must show that: (1) she belongs to a class protected under Title VII; (2) she was qualified for the position she held; (3) she suffered an adverse employment action; and *(4)* she was replaced by an individual not within the protected class." *Brewer v. Cleveland Municipal School District,* 2003'W L 23095541 at * 1 (6th Cir.

> 12/11/03) (unpublished)(citing *McDonnell Douglas,* 411 U.S. at 802); *see also Taylor,* 350 F.3d at 1292 (elements in a Title VII retaliation case).
>
> Here the defendants explicitly concede that plaintiff has met elements (I) and (2), focus their main defense on element *(3) (i.e.,* no adverse employment action), doc. # 72 at 1-3, and argue that element (4) is moot because plaintiff voluntarily retired. *Id* at 13-14.

3 But it's far too easy to point to dissimilar races between workers and bosses, then claim that race discrimination drove an unpleasant event or exchange. Judges and juries can't look into people's minds after the fact and ascertain whether that occurred, and not "every unkind act" is sufficiently adverse. *Davis v. Town of Lake Park, Fla.,* 245 F.3d 1232, 1238 (11th Cir. 2001).

To police the borderline between actionable and non-actionable Title VII (etc.) claims, then, courts have imposed minimum circumstantial-evidence benchmarks that plaintiffs must meet in order to take their case to a jury (i.e., survive summary judgment). An "adverse employment action" thus is defined as

> a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing significant change in benefits. [Hence,] formal criticism or poor performance evaluations are not necessarily adverse actions and they should not be considered such if they did not

affect the employee's grade or salary.

Taylor, 350 F.3d at 1292 (quotes, cites and alterations omitted); *see also id.* (employee failed to make out prima facie Title VII retaliation claim, absent showing that supervisor's allegedly retaliatory acts -- changing employee's first-line supervisor and modifying her performance plan -- constituted adverse employment actions; there was no evidence that changes had material adverse effect upon terms or conditions of employee's employment); *Sinegar v. Jefferson Parish Sch. Bd.,* 2003 WL 21977157 at * 5 (E.D.La. 8/13/03) (unpublished) ("alleged write ups, conferences, and warnings did not constitute adverse employment actions"); *Murphy v. Bd. of Educ.,* 273 F.Supp.2d 292, 303-04 (W.D.N.Y.2003) (Transfers and reassignments of teacher to different schools did not constitute adverse employment actions, as required to support teacher's discrimination and retaliation claims under federal statutes against school district: transfers and reassignments did not materially change any of teacher's conditions of employment, nor did they result in change in responsibilities so significant as to constitute setback in teacher's career) .[4]

FN 4 The Court notes that Tremble is blending equal protection -- brought under § 1983 -- and Title VII claims here. Doc. # 119 at 8 ¶ 10. "[T]he same standards for proving intentional discrimination apply to Title VII and § 1983 equal protection" claims. *Williams v. Send* 342 F.3d 774, 788 n. 13 (7th Cir. 2003); *Brewer,* 2003 WL 23095541 at * I ("To prove a violation of the equal protection clause under § 1983, a plaintiff must prove the same elements as are required to establish a disparate treatment